

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KENT DAVIS,)	EDCV 08-1262 SVW (SSx)
)	
Plaintiff,)	
)	FINDINGS OF FACT AND
v.)	CONCLUSIONS OF LAW
)	
COUNTY OF SAN BERNARDINO, SAN)	
BERNARDINO SHERIFF'S DEPARTMENT,)	
SGT. STEVE SPEAR, SHERIFF GARY)	
PENROD, in his individual)	
capacity, and DOES 2-10,)	
)	
Defendants.)	

I. PROCEDURAL HISTORY

Plaintiff has brought an action under Cal. Civ. Code § 52.1 and 42 U.S.C. § 1983 against police Sergeant Steve Spear, the County of San Bernardino, and the County of San Bernardino Sheriff's Department. Plaintiff's case is premised on two basic assertions: he was arrested without probable cause and he was subjected to excessive force during

1 that arrest. Plaintiff's causes of action assert violations of the
2 Fourth Amendment of the United States Constitution, and Art. I,
3 § 13 of the California Constitution. (Pl.'s Trial Brief, at 2.) The
4 municipal entities' liability is premised on Cal. Gov. Code § 815.2(a),
5 which provides that government entities are vicariously liable for the
6 acts of their employees to the extent that the employees are personally
7 liable, and Monell v. Dep't of Social Servs. of N.Y., 436 U.S. 658, 690
8 (1978).

9 In April 2009, Defendants brought a Motion for Partial Summary
10 Judgment [docket no. 26]. Plaintiff conceded that his Fourth Amendment
11 wrongful arrest claim was barred by Atwater v. City of Lago Vista, 532
12 U.S. 318 (2001). The Court deferred a ruling on Defendants' arguments
13 regarding the effect of Heck v. Humphrey and qualified immunity.

14 The Court held a bench trial on September 22, 2009.
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16 **II. FACTUAL FINDINGS**

17

18 By way of introduction, the Court notes that, to the extent that
19 the parties dispute the facts at issue, the court finds Mr. Davis's
20 testimony not to be credible. Mr. Davis's testimony is contradicted on
21 various points by Sgt. Spear's and Mr. O'Brien's testimony. In light
22 of this consideration, the Court makes the following factual findings.

23 On October 16, 2007, Plaintiff Kent Davis was visiting his ill
24 mother in 29 Palms, which is located near Joshua Tree, California. At
25 around 11:00 am, Davis went to the Joshua Tree branch of the San
26 Bernardino Superior Court to deliver documents for his mother. Davis
27 was driving his mother's classic 1976 Cadillac. Upon his arrival and
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1 the courthouse, Davis parked the car along the curb directly in front
2 of the courthouse entrance. The general parking area was some distance
3 away. The area where Davis parked was clearly marked on the pavement
4 in a bold, yellow box, with the words "MAINTENANCE ONLY."

5 While at the courthouse, Davis was initially turned away by the
6 security guards at the entrance checkpoint because Davis was carrying a
7 cellular phone that included a picture-taking function. As cameras are
8 not allowed in the courthouse, Davis was required to place the phone in
9 his car before entering the courthouse.

10 Defendant Sgt. Steve Spear first noticed Davis when Davis was
11 discussing the cellular phone with the security guards. The encounter
12 between Davis and the security guards was generally amicable but Davis
13 was animated. Immediately following the encounter, Sgt. Spear asked
14 one of the guards if Davis had a problem, and the guard replied that he
15 did.

16 Sgt. Spear approached Davis as Davis was returning his phone to
17 his car. Sgt. Spear asked Davis to move his car because it was parked
18 in a no-parking zone. Davis's initial response was to smirk at Sgt.
19 Spear, then walk around the car looking underneath it as if he had not
20 already noticed the no-parking label. After Davis looked at the
21 "MAINTENANCE ONLY" marking on the ground, he complied with Sgt. Spear's
22 request. When Davis parked the car in the general parking lot, the car
23 occupied four separate parking spaces.

24 While Davis was moving the car, Sgt. Spear noticed the car did not
25 have license plates on the rear of the car. Sgt. Spear walked to where
26 Davis had parked and looked at the front of the car to see if there
27 were any front license plates. There were none.
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1 By the time Sgt. Spear had finished checking for the license
2 plates, Davis had walked back toward the courthouse. When Sgt. Spear
3 approach, Davis said something to the effect of "I knew you were going
4 to check my car. Did you have to wait until I walked away before you
5 checked my car?"

6 Sgt. Spear then asked Davis about his license plates. Davis
7 replied by noting that, lying flat along the back ledge of the car
8 interior, there was a Missouri dealer plate that had been loaned to
9 his mother. The registration tags on the plates had expired in
10 December 2003. Davis noted that the car had been purchased in
11 Oklahoma. Davis believed that these expired Missouri plates, placed on
12 a car purchased in Oklahoma, were sufficient to permit him to drive his
13 car in California until he obtained proper registration. Davis noted
14 that he was visiting his mother.

15 Sgt. Spear asked Davis to provide registration for the vehicle.
16 Davis responded by referring to the Missouri dealer plate. Sgt. Spear
17 again asked Davis to provide registration for the vehicle. Sgt. Spear
18 informed Davis that Sgt. Spear would run a registration search, and if
19 it was not properly registered Sgt. Spear would be required to tow it.
20 Davis asked "What can I do to get you to leave the car," and Sgt. Spear
21 answered by saying that Davis would have to produce the registration
22 for the vehicle.

23 Davis then asked if he could return to the courthouse to take care
24 of his business, and Sgt. Spear said that he could. While Davis was in
25 the courthouse, Sgt. Spear contacted dispatch and ran a Vehicle
26 Identification Number search of the vehicle. At no point did Sgt.
27 Spear believe that the car was stolen.
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1 While the search was pending, Davis returned and asked Sgt. Spear
2 if Davis could speak with Sgt. Spear's watch commander. Sgt. Spear
3 responded by pointing to his uniform patch and stating that he was the
4 watch commander.

5 Davis told Sgt. Spear that Davis could provide the title for the
6 vehicle. Sgt. Spear replied that he was interested in the registration
7 rather than the title.

8 Davis then opened his cellular phone and began talking to his
9 mother. Davis told his mother that the Cadillac would be towed unless
10 she brought the title to the courthouse. Sgt. Spear again told Davis
11 that he needed the registration rather than the title. Soon after,
12 Sgt. Spear asked Davis to hang up the phone and Davis complied.

13 After the conversation, without being prompted, Davis told Sgt.
14 Spear that Davis had a Missouri permit to carry a concealed weapon.
15 Davis intended for this statement to prove to Sgt. Spear that Davis was
16 a law-abiding citizen. Sgt. Spear asked Davis if he had a weapon with
17 him, and Davis said that he did not. Sgt. Spear believed this answer
18 and did not fear for his safety at this point in the sequence of
19 events.

20 Davis then walked toward and away from Sgt. Spear while
21 complaining about the decision to tow the car. Without explanation,
22 Davis then walked to the front passenger side door and reached into the
23 car. Davis spent some time looking at and shuffling through his
24 belongings. At this point, Sgt. Spear began to be concerned regarding
25 his personal safety. Davis did not remove anything from the car. Sgt.
26 Spear noted that there were no weapons in the car, then closed the car
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1 door. Davis then walked to the rear of the car and stood near the
2 trunk.

3 Sgt. Spear asked Davis if his mother would be bringing the
4 vehicle's registration. Davis replied that Sgt. Spear would not do
5 anything until Davis's mother arrived. Sgt. Spear said that he would
6 drop the matter if Davis provided a valid registration. Davis again
7 told Sgt. Spear "you will do nothing." Sgt. Spear once again asked for
8 registration, and Davis said "No. You have to wait for my mother."

9 At this point, dispatch responded with the results of the Vehicle
10 Identification Number search. The search showed that the Cadillac did
11 not appear in any system as being registered in Missouri or California.
12 Sgt. Spear told Davis that the car was not registered and that Sgt.
13 Spear would tow the car. Davis again told Sgt. Spear, "You will do
14 nothing."

15 Sgt. Spear then asked Davis for the keys to the car. Sgt. Spear
16 believed that the keys were necessary to protect his own safety as well
17 as the safety of his officers. Sgt. Spear believed that Davis might
18 use the keys to open the trunk (which had unknown contents) or to drive
19 away in the car. Sgt. Spear had previously experienced a situation in
20 which, prior to conducting a tow, a driver used the keys to start the
21 engine and drive away. In view of this personal experience, Sgt. Spear
22 believed that Davis might do the same if Davis retained possession of
23 the keys. Were Davis to drive off with the vehicle, Sgt. Spear
24 believed the situation would have become significantly more dangerous
25 to the public and his officers. Sgt. Spear Sgt. Spear also believed
26 that the keys would assist in loading the car onto the flatbed tow
27 truck, and his request for the keys was motivated in part out of
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1 concern for the well-being of the pristine vintage Cadillac. Sgt.
2 Spear also believed that the keys would assist the tow inventory.

3 Davis said "no" to Sgt. Spear's request for the keys. Davis then
4 moved toward the trunk of the car. Sgt. Spear again asked for the
5 keys. Davis refused again. Sgt. Spear then asked Davis, "Is there
6 anything that I can say or do to get you to comply?" Davis responded
7 "no," and said that Sgt. Spear would have to wait until Davis's mother
8 arrived. Davis also said, "what are you going to do, arrest me?"

9 In light of Davis's refusals, Sgt. Spear believed that Davis would
10 not cooperate with Sgt. Spear's request for the keys. Sgt. Spear also
11 believed that Davis potentially would not cooperate with a request to
12 turn around to be handcuffed. Accordingly, Sgt. Spear performed an
13 "immediate arrest" without any warning to Davis. Sgt. Spear used a
14 rear wrist lock of Davis's left arm, placed him against the side of the
15 car, and moved Davis's right arm around his back. Sgt. Spear then
16 placed handcuffs on Davis. Davis never stated that he felt any pain
17 during this handcuffing process.¹ There is no evidence that Sgt.
18 Spear's handcuffing procedure violated standard practices.

19 Following the handcuffing, Sgt. Spear walked with Davis into the
20 courthouse and had him sit in a chair in an office. Sgt. Spear
21 performed a medical screening interview, at which point Davis stated
22 that he had had surgery on both of his shoulders and asked to have the
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24 ¹ On this point, the Court finds credible the testimony of Sgt. Spear
25 and Mr. O'Brien, the hot dog vendor who witnessed these events. The
26 Court finds no reason to believe that Mr. O'Brien was biased in any
27 way. Further, the Court finds that Davis's testimony on this point
28 was not credible. When Davis was asked at trial about when he first
complained about feeling pain, Davis initially gave a halting answer.
Davis paused and then stated that he first complained immediately as
the handcuffing procedure began.

1 handcuffs moved to the front of his body. Roughly 15-20 seconds later,
2 after being assured that Davis would not cause any trouble, Sgt. Spear
3 repositioned the handcuffs in response to Davis's request.

4 Davis was then held, handcuffed and under arrest for approximately
5 one hour. He was charged with resisting, obstructing or delaying a
6 peace officer in performance of his lawful duties, a violation of
7 Section 148(a)(1) of the California Penal Code. After Davis signed a
8 citation and promise to appear, Sgt. Spear released him.

9 Ultimately, the section 148(a)(1) charge was dismissed, and
10 Plaintiff admitted to driving an unregistered vehicle under California
11 Vehicle Code Section 4000(a)(1).

12 13 **III. UNLAWFUL ARREST**

14 15 **A. CIVIL CODE § 52.1**

16 Plaintiff's first cause of action is for unlawful arrest under the
17 Bane Act, Cal. Civ. Code § 52.1(b).² Civ. Code § 52.1(b) establishes a
18 cause of action against a person who "interferes by threats,
19 intimidation, or coercion" with another's "exercise or enjoyment of
20 rights secured by the Constitution or laws of the United States, or of
21 rights secured by the Constitution or laws of this state." See Cal.

22
23
24 ²Plaintiff has conceded that he may not bring 42 U.S.C. § 1983 action
25 for wrongful arrest under the Fourth Amendment of the United States
26 Constitution. The Fourth Amendment permits arrests where there is
27 probable cause to believe that any criminal offense has occurred,
28 even if that offense is only subject to fine or citation.
See Atwater v. City of Lago Vista, 532 U.S. 318 (2001). It is
undisputed that Sgt. Spear had probable cause to believe that
Plaintiff had committed the offense of driving an unregistered
vehicle.

1 Civ. Code § 52.1(a)-(b). Public officers have no common law qualified
 2 immunity from § 52.1 liability. Venegas v. County of Los Angeles, 153
 3 Cal. App. 4th 1230, 1244-47 (2007).

4 A claim under § 52.1(b) includes three elements: (1) an actual or
 5 attempted interference with or violation of (2) a person's legal right
 6 (3) by threats, intimidation, or coercion. See Jones v. Kmart Corp.,
 7 17 Cal. 4th 329, 334 (1998).

8 The Court finds that Plaintiff fails to establish that Defendants
 9 have either attempted or completed any acts that violated Plaintiff's
 10 legal rights.³

11 **B. ELEMENTS OF UNLAWFUL ARREST**

12 Plaintiff's cause of action for false arrest relies on the
 13 California Constitution, Art. I, § 13, which generally protects against
 14 unreasonable searches and seizures akin to the Fourth Amendment to the
 15 United States Constitution. This question requires an examination of
 16 whether Sgt. Spear had probable cause to arrest Plaintiff.⁴

18 ³Having determined that Plaintiff has failed to show a violation of
 19 his legal rights, the Court refrains from addressing the thorny
 20 question of whether claims for unlawful arrest and excessive force
 21 automatically satisfy § 52.1's "threats, intimidation, or coercion"
 22 requirement, or whether further proof would be required. See
 23 generally Venegas, 32 Cal. 4th at 850-51 (Baxter, J., concurring)
 24 ("[I]t should not prove difficult to frame many, if not most,
 25 asserted violations of any state or federal statutory or
 constitutional right, including mere technical statutory violations,
 as incorporating a threatening, coercive, or intimidating verbal or
 written component. . . . [S]ection 52.1 will soon come to be widely
 viewed as a convenient civil litigation tool through which to reach a
 garden-variety tort defendant's deep pocket").

26 ⁴Though public employees enjoy broad immunity for exercise of public
 27 functions, Cal. Gov. Code § 820.4 carves out a specific exception for
 "liability for false arrest or false imprisonment."

28 Cal. Penal Code § 847 redundantly provides that

[footnote continued on next page]

1 **C. APPLICABILITY OF HECK v. HUMPHREY**

2 Defendants argue that Heck v. Humphrey, 512 U.S. 477 (1994), which
3 has been applied by the California courts in Yount v. City of
4 Sacramento, 43 Cal. 4th 885 (2008), bars Plaintiff from challenging the
5 validity of his arrest under Cal. Civil Code § 52.1(b).

6 The Court refrains from deciding the case under Heck. It is not
7 clear that the principles of Heck even apply to claims under § 52.1.
8 More importantly, there are unanswered questions in California law
9 regarding the interplay between Cal. Const. Art. I, § 13 and custodial
10 traffic arrests under Vehicle Code § 4000(a)(1), Vehicle Code §
11 42001.8, Penal Code § 836(a)(1), and Penal Code § 16. Defendants'
12 arguments call into question the validity of the custodial seizure,
13 which is a difficult question of state constitutional law and is
14 unnecessary for the resolution of this case. Cf. Atwater v. City of
15 Lago Vista, 532 U.S. 318 (2001) (deciding similar question under
16 Federal Constitution).

17 **D. VALIDITY OF CUSTODIAL ARREST**

18 In order to determine whether Sgt. Spear's custodial arrest of
19 Davis was valid under the law of false arrest and the California
20 Constitution, the Court must determine if Sgt. Spear had probable cause
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22

23 "[t]here shall be no civil liability on the part of, and no cause of
24 action shall arise against, any peace officer . . . acting within the
25 scope of his or her authority, for false arrest or false imprisonment
26 arising out of any arrest" where "[t]he arrest was lawful, or the
27 peace officer, at the time of the arrest, had reasonable cause to
28 believe the arrest was lawful." This rule merely states the obverse
of Gov. Code § 820.4. If an officer makes an arrest supported by
probable cause, he is immune under § 847; if an officer makes an
arrest not supported by probable cause, he is subject to liability
under § 820.4.

1 to believe that Davis was engaged in committing an offense under Penal
2 Code § 148 (obstruction, resistance, or delay of a peace officer).

3 **1. PROBABLE CAUSE STANDARD**

4 "Cause to arrest exists when the facts known to the arresting
5 officer would lead a person of ordinary care and prudence to entertain
6 an honest and strong suspicion that the person arrested is guilty of a
7 crime." People v. Price, 1 Cal. 4th 324, 410 (1991) (citing People v.
8 Harris, 15 Cal. 3d 384, 389 (1975)).

9 Or, as summarized more thoroughly by a California court,

10 Probable cause exists when the facts known to the arresting
11 officer would persuade someone of reasonable caution that the
12 person to be arrested has committed a crime. Probable cause is a
13 fluid concept--turning on the assessment of probabilities in
14 particular factual contexts. It is incapable of precise
15 definition. The substance of all the definitions of probable
16 cause is a reasonable ground for belief of guilt, and that belief
17 must be particularized with respect to the person to be . . .
18 seized. Sufficient probability, not certainty, is the touchstone
19 of reasonableness under the Fourth Amendment. Upon proof that an
20 arrest and confinement occurred without process and that the
21 plaintiff was damaged, the defendant has the burden of persuasion
22 to prove that the arrest was justified.

23 Subjective intentions play no role in ordinary, probable-
24 cause Fourth Amendment analysis. Probable cause is measured by an
25 objective standard based on the information known to the arresting
26 officer, rather than a subjective standard that would take into
27 account the arresting officer's actual motivations or beliefs.
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1 The arresting officer's actual motivations or beliefs should play
2 no role in the court's determination of probable cause.

3 Gillan v. City of San Marino, 147 Cal. App. 4th 1033, 1044-45 (2007).

4 Regardless of the reasons initially given for making an arrest, an
5 arrest is valid as long as there is probable cause to arrest for any
6 offense. See, e.g., People v. Superior Court (Johnson), 15 Cal. App.
7 3d 146; People v. Kelley, 3 Cal. App. 3d 146; People v. Walker, 273
8 Cal. App. 2d 720, 725.

9 This basic standard applies under both Federal and California
10 Constitutional law. See People v. Mower, 28 Cal. 4th 457, 473 (2003)
11 (quoting Lorenson v. Superior Court, 35 Cal. 2d 49, 56-57 (1950));
12 People v. Adair, 29 Cal. 4th 895, 904-05 (2003) (quoting People v.
13 Rhinehart, 9 Cal. 3d 139, 151 (1973)); People v. Medina, 7 Cal. 3d 30,
14 36-37 (1972); O'Toole v. Superior Court, 140 Cal. App. 4th 488, 511
15 (2006).

16 **2. PENAL CODE § 148**

17 The crime of obstructing a police officer, Cal. Penal Code §
18 148(a)(1), permits fine and imprisonment of a person who "willfully
19 resists, delays, or obstructs" a police officer "in the discharge or
20 attempt to discharge any duty of his or her office or employment."
21 Penal Code § 148(a)(1). "The legal elements of a violation of section
22 148, subdivision (a) are as follows: (1) the defendant willfully
23 resisted, delayed, or obstructed a peace officer, (2) when the officer
24 was engaged in the performance of his or her duties, and (3) the
25 defendant knew or reasonably should have known that the other person
26 was a peace officer engaged in the performance of his or her duties."
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1 People v. Simons, 42 Cal. App. 4th 1100, 1108-09 (1996) (citations
2 omitted).

3 The essence of Defendants' assertion of probable cause to arrest
4 Plaintiff under § 148 is that Plaintiff refused to hand his keys to
5 Defendant Spear following Defendant Spear's repeated requests for the
6 keys while Defendant Spear was in the process of properly impounding
7 Plaintiff's mother's Cadillac pursuant to Cal. Vehicle Code §
8 22651(o)(1).⁵

9 Defendant Spear requested the keys for these reasons: to protect
10 Plaintiff's property (the car) during the tow; to prevent Plaintiff
11 from driving away in the car and preventing the tow; to prevent
12 Plaintiff from opening the trunk, which contained contents unknown to
13

14 ⁵Vehicle Code § 22651(o)(1) provides:

15 "A peace officer . . . may remove a vehicle located within the
16 territorial limits in which the officer or employee may act,
under the following circumstances: . . .

17 (o)(1) When a vehicle is found or operated upon a highway,
18 public land, or an offstreet parking facility under the
following circumstances:

19 (A) With a registration expiration date in excess of six months
before the date it is found or operated on the highway, public
lands, or the offstreet parking facility.

20 (B) Displaying in, or upon, the vehicle, a registration card,
21 identification card, temporary receipt, license plate, special
plate, registration sticker, device issued pursuant to Section
22 4853, or permit that was not issued for that vehicle, or is not
otherwise lawfully used on that vehicle under this code.

23 (C) Displaying in, or upon, the vehicle, an altered, forged,
24 counterfeit, or falsified registration card, identification
card, temporary receipt, license plate, special plate,
25 registration sticker, device issued pursuant to Section 4853, or
permit."

26 One court has stated that the purpose of § 22651 "is to allow the
expeditious removal of vehicles from the streets in specified cases,
27 with subsidiary purposes of imposing costs on the owner and retaining
the vehicle as security for the costs." Spilman v. California
28 Highway Patrol, 212 Cal. App. 3d 59, 63 (1989) (citing Stypmann v.
City & Cty. of San Francisco, 557 F.2d 1338, 1343 9th Cir. 1977)).

1 Defendant Spear; and to assist with the inventory conducted in
2 connection with the impoundment.

3 The Court finds that Sgt. Spear had probable cause to believe that
4 Plaintiff "resisted, delayed, or obstructed" Sgt. Spear's exercise of
5 his duties as a sheriff's deputy.

6 In construing the meaning of these terms, "it surely cannot be
7 supposed that Penal Code section 148 criminalizes a person's failure to
8 respond with alacrity to police orders." People v. Quiroga, 16 Cal.
9 App. 4th 961, 966 (1993); see also People v. Wetzel, 11 Cal. 3d 104
10 (1974) (failure to consent to police request does not constitute
11 resistance, delay, or obstruction where non-consenting party retained
12 significant privacy interest in withholding consent); Mackinney v.
13 Nielsen, 69 F.3d 1002, 1005-06 (9th Cir. 1995) (act of "momentary
14 disobedience" by "refus[ing] to comply for only a few seconds" with
15 police order to stop writing on sidewalk does not constitute
16 resistance, delay, or obstruction).

17 However, while mere delay is not criminalized under § 148,
18 outright refusal to comply with police orders falls within the scope of
19 the statute if it impedes the officer in the conduct of his duties.
20 See Smith v. City of Hemet, 394 F.3d 689, 696-97 (9th Cir. 2005) (en
21 banc) (suspect's acts - - failure to take hands out of pockets, put
22 hands on head, leave porch, and turn around - - each constituted
23 violation of § 148 where they impeded ongoing investigation); In re
24 Muhammed C., 95 Cal. App. 4th 1325, 1330 (2002) (suspect's refusal to
25 move away from police car, and gesture of defiance by putting hand up
26 to police officers, constituted violation of § 148 because "Appellant
27 affirmatively responded to the police orders with defiance" and impeded
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1 ongoing investigation); People v. Allen, 109 Cal. App. 3d 981, 987 n.1
2 (1980) (distinguishing mere "refusal to give consent" and "refus[al] to
3 cooperate" from "actively imped[ing] an officer in the performance of
4 his duty").

5 In the present case, Plaintiff repeatedly refused to give his keys
6 to Sgt. Spear despite multiple requests from Sgt. Spear. In light of
7 the facts presented at trial, the Court finds that Plaintiff displayed
8 an ongoing pattern of uncooperative behavior, and that Plaintiff's
9 demeanor was one of outright defiance, not mere delay. Sgt. Spear had
10 probable cause to believe that Plaintiff's actions constituted
11 "resist[ance], delay[], or obstruct[ion]."

12 In light of these factual circumstances, Sgt. Spear was acting in
13 the scope of his duties when he asked to obtain possession of
14 Plaintiff's carkeys. Sheriffs are legally empowered to "preserve
15 peace," engage in "crime prevention," see Cal. Gov. Code § 26600, and
16 protect property, see People v. Rhodes, 21 Cal. App. 3d 10, 18-20
17 (1971) ("Both the United States Supreme Court and the California
18 Supreme Court have upheld the lawfulness of police action taken for the
19 protection of private property.") Police are also authorized to
20 impound vehicles that have violated Vehicle Code § 22651(o)(1).

21 Plaintiff repeatedly refused to comply with Defendant Spear's
22 requests. At the outset of Plaintiff's interaction with Sgt. Spear,
23 Plaintiff displayed a clear disregard for the law. Plaintiff parked in
24 an area where Plaintiff was clearly not permitted to park, and when
25 asked to move the car, Plaintiff parked his car so that it occupied
26 four separate spaces. Then, in Sgt. Spear's direct interactions with
27 Plaintiff, Plaintiff repeatedly refused to cooperate. Plaintiff
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1 willfully failed to respond to Spear's requests for the car
2 registration; instead, Plaintiff repeatedly and willfully ignored the
3 fact that Sgt. Spear was asking for the registration rather than the
4 title. Plaintiff told Sgt. Spear how to do his job by twice telling
5 Spear that Spear would *not do anything* until Plaintiff's mother
6 arrived.

7 In addition, Plaintiff displayed impulsiveness and irrationality
8 that suggested he might behave in unpredictable ways. At multiple
9 points during the encounter, Plaintiff acted in a bizarre, inexplicable
10 manner. For example, Davis showed his concealed weapon permit to
11 Defendant Spear even though the subject had not been raised, and
12 despite the fact that there was no logical reason for Davis to believe
13 that the weapon permit was relevant to Spear's request for the car
14 registration. In addition, Davis rummaged through the front passenger
15 seat without explanation, walked back and forth around the car in a
16 sudden manner for no apparent reason, and repeatedly insisted on
17 discussing the car's title when Spear clearly requested the
18 registration.

19 Though police officers do not have blanket authorization to
20 request carkeys from individuals, in this particular situation Sgt.
21 Spear was justified in requesting Plaintiff's keys. Sgt. Spear
22 possessed an objectively reasonable belief that his possession of the
23 carkeys would protect Plaintiff's property (the car) during the tow,
24 and Sgt. Spear possessed a good faith desire to protect the condition
25 of Plaintiff's vintage car. Sgt. Spear possessed an objectively
26 reasonable belief that Plaintiff might drive away in the car and
27 potentially escalate the situation into a car chase, in light of
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1 Plaintiff's bizarre and impulsive behavior as well as Sgt. Spear's
2 previous experience with a person driving away in a car while the tow
3 truck was en route. In addition, Sgt. Spear possessed an objectively
4 reasonable belief that Plaintiff might open the trunk and retrieve
5 potentially dangerous objects, including but not limited to a gun or
6 other weapon given that Plaintiff had already inexplicably showed Sgt.
7 Spear a concealed weapon permit. Finally, Sgt. Spear possessed an
8 objectively reasonable belief that the keys would generally enable
9 Spear to fulfill his duties by quickly and safely impounding
10 Plaintiff's unregistered vehicle.

11 Each one of these considerations falls within the scope of Sgt.
12 Spear's authorized duties, and taken together as a whole they justified
13 Sgt. Spear actions in requesting Plaintiff's keys and arresting
14 Plaintiff for failing to cooperate after multiple requests. Above all,
15 Sgt. Spear was strongly justified in believing that Sgt. Spear's
16 possession of the keys would protect public and officer safety. Sgt.
17 Spear's fears were objectively reasonable in the circumstances.

18 Accordingly, Sgt. Spear had probable cause to arrest Plaintiff
19 under Cal. Penal Code § 148. Accordingly, the Court holds that
20 Plaintiff's claim of unlawful arrest under Cal. Civ Code § 52.1 fails.⁶

22 ⁶Though other states' caselaw is not binding authority regarding the
23 meaning of Cal. Penal Code § 148, the Court notes that courts in
24 other jurisdictions have reached similar conclusions in analogous
25 factual circumstances. State v. Goering, 392 P.2d 930, 932-33 (Kan.
26 1964) (affirming obstruction conviction where police officers
27 requested truck keys from the defendant and the defendant "replied,
28 in substance, that the officers were not getting anything and 'to
heck with you guys'"; though the defendant also engaged in physical
acts of resistance, the officers' initial arrest was made prior to
any physical resistance, and neither the jury nor the court
entertained the notion that the initial arrest was unlawful);

[footnote continued on next page]

1 **IV. EXCESSIVE FORCE**

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3 As a preliminary matter, it is important to note that Plaintiff's

4 excessive force claim under Cal. Civ. Code § 52.1 and Cal. Const. Art.

5 1, § 7 is barred by Cal. Gov. Code § 821.6, which provides that

6 "[e]xcept as otherwise provided by statute, a public employee is not

7 liable for an injury resulting from his act or omission where the act

8 or omission was the result of the exercise of the discretion vested in

9 him, whether or not such discretion be abused." See also Gillan v. San

10 Marino, 147 Cal. App. 4th 1033, 1050-51 (2007).

11 With respect to Plaintiff's § 1983 claim under the Fourth

12 Amendment, Graham v. Connor, 490 U.S. 386, 397 (1989), established that

13 police officers are permitted to use force that is "objectively

14 reasonable" under the circumstances to effect an arrest or detention.

15 The Court recognized that "Fourth Amendment jurisprudence has long

16 recognized that the right to make an arrest . . . necessarily carries

17 with it the right to use some degree of physical coercion." 490 U.S.

18 at 396. The Ninth Circuit has laid out the factors used to determine

19 whether the amount of force is reasonable:

20 [The] relevant factors in the Fourth Amendment reasonableness

21 inquiry include "[1] the severity of the crime at issue,[2]

22 whether the suspect poses an immediate threat to the safety of the

23

24 People v. Hetzel, 531 N.E. 2d 436, 438-39 (Ill. App. 1988) (affirming

25 obstruction conviction where the defendant refused to give house keys

26 and car keys to police, and the defendant's refusal interfered with

27 police officers' duties in responding to and preventing domestic

28 violence); People v. Fidler, 280 A.D. 698 (N.Y. App. 1952) (affirming

obstruction conviction against commercial truck drivers who refused

to hand their keys to the state police, because the police were

statutorily authorized to inspect and weigh vehicles operating on the

highways).

1 officers or others, and [3] whether he is actively resisting
2 arrest or attempting to evade arrest by flight." The [Supreme]
3 Court did not, however, limit the inquiry to those factors.

4 "Because the test of reasonableness under the Fourth Amendment is
5 not capable of precise definition or mechanical application," the
6 reasonableness of a seizure must instead be assessed by carefully
7 considering the objective facts and circumstances that confronted
8 the arresting officers. In some cases, for example, the
9 availability of alternative methods of capturing or subduing a
10 suspect may be a factor to consider.

11 Smith v. City of Hemet 394 F.3d 689, 701 (9th Cir. 2005) (en banc)
12 (citing Graham, 490 U.S. at 396; Chew v. Gates, 27 F.3d 1432, 1441 n.5
13 (9th Cir. 1994)).

14 Here, Sgt. Spear's initial decision to place handcuffs was
15 objectively reasonable in light of the reasons identified *supra* that
16 supported probable cause to arrest Plaintiff under Penal Code § 148.
17 In addition, Sgt. Spear had a reasonable basis to believe that
18 Plaintiff might have responded in an impulsive, irrational, and
19 potentially dangerous manner had Sgt. Spear not executed the
20 handcuffing in a swift manner. Sgt. Spear had lawful authority to
21 perform a custodial arrest on Plaintiff, and the facts do not indicate
22 that this custodial arrest was performed in a manner contrary to
23 standard practices. It is clear from the testimony at trial that the
24 handcuffing was not extraordinary in any way, but it was Plaintiff's
25 pre-existing shoulder injuries that caused him to feel pain.

26 Plaintiff's principle claim is that the initial act of handcuffing
27 caused him shoulder pain. Plaintiff asserts that he immediately
28

1 complained about the pain and told Sgt. Spear about his history of
2 shoulder problems and shoulder surgeries. Plaintiff asserts that Sgt.
3 Spear ignored these complaints, and as a result Plaintiff suffered
4 unnecessary pain.

5 Plaintiff's excessive force claim is rejected because it is not
6 supported by the facts presented at trial. The facts show that
7 Plaintiff never complained about the handcuffs until he was in custody
8 in the police conference room roughly ten minutes later. This finding
9 is based on the Court's finding that Sgt. Spear was truthful and
10 Plaintiff was untruthful. This finding is further confirmed by the
11 testimony of the hot dog vendor, Mr. O'Brien.

12 To the extent that Plaintiff's claim arises from tight or
13 uncomfortable placement of the handcuffs, Plaintiff presented no
14 evidence to support this assertion. The evidence shows that the
15 handcuffs were placed in a reasonable manner. The evidence also shows
16 that Sgt. Spear immediately responded to Plaintiff's complaints of
17 discomfort by repositioning the handcuffs to relieve any pain that
18 Plaintiff might have felt in his shoulders.

19 Accordingly, Plaintiff's excessive force claims fail.

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1 **V. CONCLUSION**

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3 For the foregoing reasons, the Court finds Defendants are NOT
4 LIABLE to Plaintiff. Defendants are ORDERED to submit a Proposed Final
5 Judgement consistent with this Order.

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13 IT IS SO ORDERED.

14 DATED: November 13, 2009



STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE